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Nos. 01-1118, 01-1119

IN THE

Supreme Court of the United States

October Term, 2001

Joseph Scheidler, Andrew Scholberg, Timothy Murphy, and the Pro-Life Action League, Inc.,
Petitioners

v.

National Organization for Women, Inc., et al.
Respondents

Motion of Seamless Garment Network, Sojourners, Southern Christian Leadership Conference, et al., and Brief Amicus Curiae in Support of Granting the Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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Amici Curiae Listed Alphabetically

Individuals

David Atwood, Donald Bauer, Daniel Berrigan, Philip Berrigan, Wendell Berry, Abe Bonowitz, Roy Bourgeois, Bernard Broussard, Will Davis Campbell, Janet Chisholm, Carol Crossed, John Dear, Richard Deats, Peter DeMott, Jim and Shelley Douglass, William and Eugenia Durland, Ruth Enero, Mary Anne Flores, Bruce Friedrich, Clare Grady, Ellen Grady, Thomas Gumbleton, Lana Jacobs, Kathy Kelly, Art Laffin, Rachel MacNair, Liz McAlister, Deborah McEvoy, Richard McSorley, Paul Magno, Lillibeth Navarro, Patrick O'Neill, Gail Phares, Mary Rider, Scott and Claire Schaeffer-Duffy, Martin Sheen, Kathy Boylan Shields, Jessica Stewart, John Stoner, Andrew L. Sullivan, Brian Terrell, Howard Zinn, and Stephen Zunes

Associations or Communities

Agape, Casa Juan Diego (Houston, TX), Catholic Peace Fellowship, Center for Action and Contemplation, Center for Peace Studies at Georgetown University, Citizens United for Alternatives to the Death Penalty, Day House (Detroit, MI), Dorothy Day Catholic Worker House, Embrace a Consistent Ethic, Every Church a Peace Church, Feminists for Life of New York, Franciscan Office of Justice, Peace, and the Integrity of Creation, Ithaca NY Catholic Worker, The Los Angeles Catholic Worker, Mary's House (Birmingham, AL), Nevada Desert Experience, Not Dead Yet, The Peter Maurin Center, Pax Christi USA, Plowshares, St. Francis Catholic Worker Community (Columbia, MO), St. Francis and Therese Catholic Worker House (Worcester, MA), Southern Christian Leadership Conference, Vieques Support Committee, Voices in the Wilderness, and Witnesses for Reconciliation.

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Motion of Seamless Garment Network, Sojourners, Southern Christian Leadership Conference, et al., for Leave to File Brief Amicus Curiae

This motion is filed pursuant to Rule 37.2(b) of the Rules of this Court. Counsel of Record for the Petitioners in Nos. 01-1118 and 01-1119 have consented to the filing of this brief. Their consent letters have been lodged with the Clerk of the Court. This motion is necessitated because Counsel for the Respondents in Nos. 01-1118 and 01-1119 has withheld consent.

Amici[1] are individuals and voluntary associations committed to principles of social justice on a wide range of issues of public importance. Participation of an organization in the filing of this brief does not imply that that organization agrees with the substantive views of the petitioners about abortion. Some of the organizations support the views of the petitioners; other organizations have views opposed to those of the petitioners; and still others have no official view on this issue. But all of the amici, whether individuals or communities, join this brief because the novel view of extortion expressed by the court of appeals exposes them to liability under the Racketeer-Influenced and Corrupt Organizations [RICO] act in a manner that they deem clearly at odds with the history of civil disobedience in this country and to the core principle of the First Amendment: the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open." *New York Times v. Sullivan*, 376 U.S. 264, 270 (1964).

The Southern Christian Leadership Conference [SCLC], the premier civil rights organization of the 1950s and 1960s founded by Dr. Martin Luther King, Jr., filed a

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[1] Pursuant to Rule 37.6 of the Rules of this Court, Amici state that no counsel for a party has authored this brief in whole or in part and that no person or entity, other than amicus curiae, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief.

motion in the court of appeals for leave to file a brief amicus curiae in support of the petitioners (appellants). The court of appeals denied this motion, rejecting this brief as "duplicative." The participation of the SCLC in the filing of the attached brief in this Court underscores a broad commitment by all of the amici signing this brief. In all instances when amici engage in protest of the sort described above, they do so with respect for the principle of "nonviolent direct action" made famous by Mahandas Gandhi, Dr. King, César Chavez, and others. Several individual amici, whether acting alone or in concert with others, have frequently engaged in demonstrations voicing their concerns about policies they deem to be inconsistent with their conscientious duty to protect human life.

The lead amicus, *Seamless Garment Network*, is listed first because it helped to coordinate the agreements of all of the other individuals and associations that are signatories to this brief.

Seamless Garment Network [SGN] is a coalition of groups and individuals committed to nonviolence and respect for life. The network promotes the consistent life ethic, focusing on the connections between life issues including war, abortion, poverty, racism, the arms race, the death penalty and euthanasia. SGN supports all means of nonviolent change including, but not limited to, nonviolent direct action, political and legislative action and direct service to those suffering under these attacks on life. *Carol Crossed* (the former executive director of SGN), *Mary S. Rider* (the current executive director), and *Ruth Enero* (president of the Board of Directors) have frequently engaged in nonviolent civil disobedience relating to the issues listed above. All three are married women and mothers of several children. If their political opponents were to use civil RICO against them, the loss of their homes, cars, and other valuable things they own would wreak havoc upon them and their families. Ms. Rider offered a declaration before the district court at the stage when it was considering the issuance of the nationwide injunction against anyone associated with the Pro-Life Abortion Network [PLAN].

This declaration challenged the enormous breadth of the nationwide injunction.

Individuals

David Atwood is the director of the Texas Coalition to Abolish the Death Penalty Pax Christi of Texas. This group regularly organizes demonstrations against the death penalty in Texas.

Donald Bauer is a Catholic priest who served as a member of the New York State Labor and Religion Coalition since its inception, and who worked tirelessly for farmworker wage equity and other issues on behalf of the poor. He also was appointed to the Congress on Racial Equality and in both of these capacities used public witness to educate and challenge the public.

Wendell Berry is an author, farmer, English professor, and poet. As a long-time conservationist and small farm advocate, he has written many books deploring the loss of family farms and rural jobs to farm factories. He is the recipient of many awards, including the Lyndhurst Foundation Prize and the Jean Stein Award from the American Academy of Arts and Letters.

Abe Bonowitz is the director of *Citizens United for Alternatives to the Death Penalty* [CUADP], a national organization that works to end the death penalty in the United States through aggressive campaigns of public education and the promotion of tactical grassroots activism.

Roy Bourgeois, M.M., is a Maryknoll priest who, after years as a foreign missionary in Central America, founded the School of the Americas Watch [SOAW], a loose coalition of citizens concerned about the widespread abuse of human rights – including torture and murder of religious leaders and labor leaders throughout Central and South America – by foreign military officers who study at the U.S. Army School of the Americas at Ft. Benning, GA. Each November – on the anniversary of the assassination of seven Jesuit priests and their domestic workers in San Salvador by graduates of the School of the Americas – SOAW

organizes a major demonstration at Ft. Benning against the negative effects of this program upon peace and justice in our hemisphere.

Bernard Broussard is the founder of the *Human Relations Council of Louisiana*, a group that played a leading role in community organization on behalf of the civil rights of African Americans in Louisiana in the mid 1960s. From that time to the present, he continues to challenge through marches, demonstrations, holding prayer meetings on behalf of the oppressed in the South. He is a founder of *Starthrowers*, a human rights organization based in Louisiana.

Will Davis Campbell is a writer, lecturer, and long time supporter of the Civil Rights Movement who helped escort African-American children when they tried to integrate a Little Rock, Arkansas high school back in 1957. A founding member of Dr. King's Southern Christian Leadership Conference, he became the Executive Director of the Committee for Southern Churchmen, which is now known as Witnesses for Reconciliation.

Janet Chisholm and *Richard Deats* are the co-executive directors of the Fellowship of Reconciliation [FOR], the largest, oldest interfaith peace organization in the United States. Since 1915 FOR has carried on programs and educational projects concerned with domestic and international peace and justice, nonviolent alternatives to conflict, and the rights of conscience. FOR promotes nonviolence and has members from many religious and ethnic traditions. It is a part of the International Fellowship of Reconciliation, which has affiliates in over 40 countries. FOR was instrumental, maybe critical, in bringing the Gandhian theory of nonviolent activism into play during the Civil Rights Revolution.

Jim and Shelley Douglass are co-founders of Mary House, Catholic Workers, in Birmingham, Alabama, peace activists, co-founders of Ground Zero Center for Nonviolent Action, and co-organizers of a national campaign to stop the "White Trains" transporting nuclear weapons across the U.S. and to stop the Trident nuclear submarine and missile system. The Douglasses believe that every nonviolent

movement in U.S. history could have been squelched by the way in which RICO has been applied in *NOW v. Scheidler*. The adverse rulings in this case threaten to oppress and deter the organizers of future nonviolent campaigns, now unknown, that may someday prove necessary to the very existence of our country and of life on earth. The Douglasses express the hope that the Supreme Court recognizes that to bolster any one party's mental security in a controversy by destroying an opponent's right to dissent can undermine the most basic human freedoms secured by the Constitution.

William and Eugenia Durland are the founders of the Center on Law and Conscience. Their interest in this case is expressed in the form of a question: "Was Martin Luther King, Jr., a racketeer and extortionist?" They also state: "In the wake of September 11, our constitutional protections are being eradicated in the name of a security state. RICO should not be applied to the exercise of conscientious nonviolence."

Mary Anne Flores, *Clare Grady*, and *Jessica Stewart* are members of the Ithaca Peace Community, a group that expresses concern about social justice issues and facilitates the representation of those who would otherwise remain voiceless and unheard in our society. These three women have engaged in nonviolent direct action that has led to their arrest for trespass upon government property. For example, they have served sentences for trespass at the Hancock Airfield in Syracuse, NY, in order to protest the ongoing bombing of the people of Iraq.

Thomas Gumbleton is a Catholic bishop in the Archdiocese of Detroit, Michigan, and a founder of Pax Christi, USA. He was a leading voice urging the United States Conference of Catholic Bishops to issue its statement in 1971 collectively opposing the Vietnam War on the ground that the war could be longer be justified on the principles of the just war tradition. Bishop Gumbleton has worked and visited in poor and war-torn countries in Latin America and the Caribbean and is deeply concerned with human rights violations around the world. He holds a deep belief in the power of nonviolence to effect social change.

Kathy Kelly is a co-founder of Voices in the Wilderness, a campaign or movement opposing the economic sanctions imposed upon Iraq. The American Friends Service Committee nominated her last year for the Nobel Peace Prize.

Lana Jacobs received the Martin Luther King Award from Companions of Shalom for her work with the inner-city in Columbia, MO, where she lives in community with the poor. Ms. Jacobs has been arrested numerous times for nonviolent direct actions defending the homeless and hungry. Each month she engages in some form of public protest against military build-up, which in her view robs the poor of what they rightfully deserve.

Deborah McEvoy, is a member of *Feminists for Life of America* and of the Detroit Peace Community. In her role as a health professional, she supports the needs of women and their children through petitions, public advocacy and demonstrations.

Rachel MacNair, a Quaker, is the founder and director of *the Feminism and Nonviolence Studies Association*. She has been arrested frequently for participation in nonviolent direct actions at nuclear weapons facilities and abortion clinics.

Lillibeth Navarro is a wheelchair-bound disabilities rights leader and activist in Los Angeles, where she works with *Communities Actively Living Independent and Free* (CALIF). Being in a public and visible role bringing their message of independence on the street is critical to the disabled, whose access to other venues is often stifled.

Gail Phares is a founder of *Witness for Peace* [WFP] a national organization working to affect U.S. policy in Latin America. Ms. Phares is also the founder and director of the Carolina Interfaith Task Force on Central America. She has led many delegations to war-torn areas in Latin America and frequently joins nonviolent peace and justice actions at home. The members of WFP believe that organizing for justice –including the right to nonviolent protest of official policies of our government – is a fundamental right secured

under the Constitution.

Scott and Claire Schaeffer-Duffy are co-founders of the Saints Francis and Therese Catholic Worker in Worcester, MA, a lay Catholic pacifist community which offers hospitality to homeless men and women. They also publish the *Catholic Radical*, a bi-monthly journal of opinion. Scott, who has engaged in civil disobedience at weapons facilities and abortion clinics, has lectured extensively on the value of nonviolent direct action at colleges and universities throughout New England. The Schaeffer-Duffy's state their interest in this case as follows: "Nonviolent civil disobedience is an American tradition, one that has brought much good to our country. We advocate its use when laws contradict the needs of the common good and the greater law of God's love for all." The Saints. Francis and Therese Catholic Worker is a member of the Seamless Garment Network.

Martin Sheen is an actor who has participated for nearly two decades in protests against weapons of mass destruction and in demonstrations pertaining to homelessness and other issues of social justice.

John Stoner is a member of Mennonite Central Committee, a traditional peace church. He is the founder of *Every Church a Peace Church*, a movement to share the convictions of the Anabaptist community with all other Christian churches.

Andrew L. Sullivan served as the Chair of the Libertarian Party of Nebraska from 1999 to 2001. His interest in this case is that law must hold the greatest punishment for violent acts and must distinguish between violent and nonviolent acts. The misapplication of RICO to nonviolent civil protest levels out the distinction between violence and nonviolence creating a waterfall turn from dissent to violent action. Without nonviolent action, people will passively accept government oppression no matter how severe, or be propelled directly into violent action, for the penalty for actions of nonviolence would become essentially the same as violent actions.

Brian Terrell is a leader of the Catholic Peace Ministry

in Des Moines, Iowa and is a participant with members of the Des Moines Catholic Worker community in nonviolent Gandhian activism at Offut Airforce Base.

Howard Zinn is a Professor of History at Boston University. He has served as a professor of history at Spelman College in Atlanta, and as a visiting professor at the University of Paris and the University of Bologna. He has written over a dozen books which deal in some way with protest movements in American history. Two of these books most closely related to the theme of this brief are *Disobedience and Democracy* (1968), and *A People's History of the United States* (1999).

Stephen Zunes is a Professor of Political Science at the University of San Francisco. He is the principal editor of *Nonviolent Social Movements* (Blackwell, 1999). His research interests have included the impact of grassroots political movements on policy and government. Prior to his academic career, he engaged in nonviolent civil disobedience campaigns against nuclear power, nuclear weapons and apartheid and served as a staff member and nonviolence trainer for organizations supporting nonviolent civil disobedience.

Communities and Voluntary Associations

Agape is a community of faith in Franklin, LA, that witnesses for peace and justice through nonviolence. It engages in education of its members and the public, especially on the death penalty, through publishing booklets, brochures, and treatises on how to effect change through raising public awareness and consciousness about issues of justice and peace.

Catholic Peace Fellowship [CPF] is a nationwide organization of Catholics committed to peacemaking in the name of Christ. CPF engages in educational projects about peace and nonviolence, and it supports those who stand for peace by virtue of conscience. For example, some of the members of CPF have engaged in nonviolent civil disobedi-

ence of laws and policies inimical to peace in today's world.

Center for Action and Contemplation is a Christian Center forwarding the integration of social action and contemplative prayer. We actively engage in transforming society around the issues of poverty, war, and other kinds of violence.

Center for Peace Studies at Georgetown University engages in education about historical figures, like Dr. Martin Luther King, Jr, Mohandas Gandhi, Thomas Merton and their message of how to achieve peace through "creative tension," "disturbing a negative peace," and "consciousness raising." The founder, *Richard McSorley*, S.J., has been a leader in these educational endeavors for over two decades. He regularly organizes students and others to appear publicly at the Pentagon, the White House, and other federal institutions in and around Washington DC, to protest policies that deprive the poor of justice.

Citizens United for Alternatives to the Death Penalty [CUADP] is a national organization that works to end the death penalty in the United States through aggressive campaigns of public education and the promotion of tactical grassroots activism. Like the demonstrators in the *Scheidler* case, CUADP is deeply committed to the principles and practice of nonviolence as espoused by Mohandas Gandhi, Martin Luther King, Jr., César Chavez, and others. For this reason CUADP is concerned that activists who engage in nonviolent civil resistance might be lumped with mobsters and terrorists simply for planning their activities in advance. Good planning is essential to ensuring that no property or person is hurt in the process of expressing concern or outrage at injustice.

Dorothy Day Catholic Worker House [DDCW] in Washington, D.C. is a community founded by Dorothy Day and Peter Maurin to bear witness to the Gospel that identifies service to the hungry, the thirsty, the homeless, and the imprisoned as a way of recognizing the presence of God in categories of human need. The community provides hospitality to homeless families while working to address the

root causes of homelessness. Committed to following the teachings of Christ on nonviolence, the community sponsors a weekly vigil for peace at the Pentagon as well as numerous other demonstrations against war and militarism, poverty and abortion. Other communities in the Catholic Worker network signing this brief include: St. Francis Catholic Worker Community (Columbia, MO); St. Francis and Therese Catholic Worker House (Worcester, MA); Mary's House (Birmingham, AL); The Los Angeles Catholic Worker; Ithaca NY Catholic Worker; Day House (Detroit, MI); and the Casa Juan Diego (Houston, TX).

Embrace a Consistent Ethic participates in ongoing peaceful public witness against all forms of taking human life, including opposition to war, capital punishment, euthanasia, abortion, racism & poverty. The *NOW vs Schiedler* case interferes with the ability to carry out group/individual conscientious objection, even those actions which would normally be considered within the limits of free speech.

Every Church a Peace Church [ECAPC] is an association of churches that adopt nonviolent struggle as their way to pursue justice. For this reason ECAPC agrees with the brief filed in this case by the Southern Christian Leadership Conference in the court of appeals that the power to impose treble damage awards upon the petitioners and to enter a nationwide injunction under RICO represents "clear and present danger to future prospects for the lawful exercise of our liberties, namely, the free exercise of religion, speech, press, or assembly and petition for redress of grievances." ECPC will be neither embarrassed nor deterred if we discover one day that our church members are filling the courts, and even the jails, for the free exercise of their religion in face of this regressive judicial ruling.

Feminists for Life of New York is a pro-woman, pro-life organization that advocates for change for women and their children. Some of its members engage in civil disobedience. In the twelve years since its existence across the New York, it has worn costumes of the early suffragists and stationed themselves outside of convention centers, libraries, and marched wearing the white garb of our founding

mothers on issues such as domestic violence, child abuse, and child welfare rights. Like Susan B Anthony, they have worn gags on our mouths to protest the silencing of our voices. They participate in a vigil at the Hall of Justice on every second Friday of the month to protest the death penalty.

Franciscan Office of Justice, Peace, and the Integrity of Creation, Santa Barbara Province, practice outreach, advocacy, and education with and on behalf of the friars and those with whom they minister

Nevada Desert Experience has since 1983 organized nonviolent civil disobedience at the U.S. nuclear test site in Mercury, NV, where tens of thousands of people – including the famous actor Martin Sheen – have been arrested for trespass in their public protest against weapons of mass destruction.

Not Dead Yet is a national grassroots organization of people with disabilities formed to oppose legalization of assisted suicide and euthanasia, and to bring a disability-rights perspective to the legal and sociological debate around euthanasia and physician assisted suicide. Formed in 1996 in Illinois, Not Dead Yet has worked to educate, support, coordinate and lead the disability community's effort to stop the "right to die" from becoming a duty to die or a right to kill. Not Dead Yet's amicus brief, filed in the U.S. Supreme Court in the case of *Vacco v. Quill,* 117 S.Ct. 2293 (1997), was among a handful, out of over 60 such briefs, cited by the Court in its final opinion. Not Dead Yet has given invited testimony before U.S. Congressional committees three times. Members have also engaged in non-violent direct action, such as a rally outside the U.S. Supreme Court in January, 1997, and in civil disobedience for which members, most of whom use wheelchairs, have been arrested on misdemeanor charges, such as trespass for a sit-in at the corporate headquarters of the Hemlock Society, and disturbing the peace for protest actions at a conference of the World Federation of Right To Die Societies.

The Peter Maurin Center in Washington, D.C. was established in 1997. In the words of Peter Maurin, the center

seeks to contribute to creating a "society where it is easier to be good." The Center does so in three ways: (1) evangelization in the Catholic Worker tradition through operating the Catholic Worker Bookstore; (2) carrying out the works of mercy through operating a furniture and household goods exchange, whereby people who have more than they need give it to the Center, which distribute it to needy people; and (3) organizing for peace and justice through solidarity with the people of Puerto Rico in their effort to de-colonize, and specifically to rid themselves of the Navy at Vieques; and through work for the abolition of the death penalty, specifically focusing on the case of Mumia Abu-Jamal. The Center is concerned with the broad and elastic application of the RICO act to dissent and nonviolent protest. The misapplication of the law in this way permits the government to single out and criminalize movements for social change virtually at will. Affording the government power of this nature renders democratic practices timid and superficial and essentially disempowers the People in the political process. To protect popular, and especially unpopular, political expression, these effects of the RICO law need to be nullified.

Pax Christi USA is the national Catholic peace movement of 14,000 members who are committed to the gospel imperative of seeking peace through nonviolence. The members of this association promote peace through personal; and social transformation. They frequently engage in nonviolent protest of policies that undermine peace and justice.

Plowshares is a coalition of religious believers who seek to enflesh the words of the prophet Isaiah 2:4, "They shall beat their swords into plowshares, and their spears into pruning hooks. Nation shall not take up sword against nation and neither shall they study war anymore." The founders of this movement, Fr. Daniel Berrigan, S.J., his brother, Philip Berrigan, and Philip's wife, Elizabeth McAlister, were leaders in the opposition to the Vietnam War. From burning draft files to organizing larger civil disobedience actions, they provided the peace movement with a keen focus. Their actions against militarism and the nuclear

arms race continue today. Fr. Berrigan offered a declaration before the district court at the stage when it was considering the issuance of the nationwide injunction against anyone associated with the Pro-Life Abortion Network [PLAN]. This declaration addresses the severe impact on nonviolent social protest that flows from treating loose associations of antiwar protesters as though they were racketeer-influenced corrupt organizations. The Berrigan brothers and Ms. McAlister join this brief in their individual capacities, as do the following Plowshares Activists: John Dear, S.J., Peter DeMott, Bruce Friedrich, Ellen Grady, Art Laffin, Paul Magno, Patrick O'Neill, and Kathy Boylan Shields. Fr. Dear's writings focus on nonviolence and peacemaking. His book, *Peacemaking Behind Bars*, is an account of his time spent in jail for a 1993 action at Seymour Johnson Air Force Base in Goldsboro, N.C. He has participated in many other actions of nonviolent civil disobedience for justice and peace. All of these activists have spent many years imprisoned for their nonviolent protest against war.

Sojourners is a Christian ministry whose mission is to proclaim and practice the biblical call to integrate spiritual renewal and social justice. In response to this call, the members of this community offer a vision for faith in public life by: publishing *Sojourners* magazine, and other resources that address issues of faith, politics, and culture from a biblical perspective; preaching, teaching, organizing, and public witness; nurturing community by people from the various traditions and streams of the church; supporting the work of the Sojourners Neighborhood Center in Washington, D.C.; hosting an annual program of voluntary service for education, ministry, and discipleship. Members of Sojourners seek to be guided in their lives and work by the biblical principles of justice, mercy, and humility.

Southern Christian Leadership Conference [SCLC] is a nonprofit, non-sectarian, inter-faith advocacy movement of people and for people, growing out of the deep tradition and long history of struggle for basic human rights. This movement, grounded in the philosophy of nonviolent resistance, has roots in the larger history of liberation struggles by

black people and all oppressed people the world over. SCLC holds that authentic love demands movement against injustice as a moral imperative.

Vieques Support Committee is an organization that has helped to organize civil disobedience to protest the repeated bombing of Vieques Island in Puerto Rico by the United States Navy.

Voices in the Wilderness is a group that seeks to end the economic sanctions against the people of Iraq. The group sends delegations to Iraq to break the siege and bring desperately needed medical supplies to children and families. It has also sponsored demonstrations against the ongoing sanctions, including week-long fast outside the headquarters of the United Nations in New York.

Witnesses for Reconciliation was formerly the Committee of Southern Churchmen that was founded in the 1960 to promote the work and vision of Dr. Martin Luther King, Jr., and to advance his cause of nonviolence. They promoted, participated in, and led marches, sit-ins, boycotts, and the freedom rides. Today they are small but continue to advance the cause of civil and political rights for minorities.

If uncorrected by this Court, the unwarranted expansion of the federal racketeering law by the court of appeals will repress the function of popular protest in the American constitutional order. At the very center of American constitutionalism is the commitment to truths our founders acknowledged as self-evident: that all men and women are created equal, that they are endowed by their Creator with certain inalienable rights (including life, liberty, and the pursuit of happiness) and that governments instituted to secure these rights derive their just powers from the consent of the governed. Declaration of Independence, 1 Stat. 1 (1776); Declaration of Sentiments of the Seneca Falls Convention (1848). It is "We, the People" who ordain and establish the Constitution for the United States, who ratify it in popular conventions, and who amend it over time to provide for a more perfect Union. U.S. Const., Preamble.

The government has from time to time and in various

ways violated these foundational truths. In such times, the People have often been the moral compass, disagreeing with existing policies and calling the nation forward to a deeper understanding of the fundamental truths at the heart of the American experiment, such as the right to life and the right to liberty. The law, in short, has not only been an instrument of establishing justice, but has also become a means of coerced injustice. At each of the critical turning points in our nation's history, the People have protested the moral flaws of the law, whether enacted by the people's representatives or pronounced by the judiciary.

Popular resistance to law is not justified merely because a lot of people engage in it. Lynch mobs were the classic example of violent popular power that is repugnant to our Constitutional order. But nothing analogous to that sort of violence is attributable to any of the petitioners in this case. The Court should review the decision of the court of appeals to secure one of the noblest features of American democracy, the right of the People to engage in non-violent protest against governmental violence and against violations of fundamental liberties, including the inalienable right to life itself.

For the reasons offered above, amici urge the Court to grant this Motion for leave to file the attached brief amicus curiae.

Respectfully submitted,

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Brief Amicus Curiae of Seamless Garment Network, Sojourners, Southern Christian Leadership Conference, et al., in Support of Granting the Petition

Statement of Interest of Amici Curiae

Amici[1] are voluntary associations committed to principles of nonviolent direct action on a wide range of social issues. Inclusion of an organization on this list does not imply that that organization agrees with the substantive views of the petitioners about abortion. Some of the organizations have no official view on that matter; others have views opposed to those of the petitioners. But all of the amici, whether individuals or communities, join this brief because the novel view of extortion expressed by the court of appeals exposes them to liability under RICO in a manner that they deem clearly at odds with the history of civil disobedience in this country and to the core principle of the First Amendment: the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open." *New York Times v. Sullivan*, 376 U.S. 264, 270 (1964).

The particular interests of the amici curiae are stated in the Motion for Leave to File this brief amicus curiae.

Summary of Argument

If the novel theory of extortion adopted by the court of appeals were the law of the land at any earlier period of our history, it would have been a major impediment to all movements of social protest that have enhanced the protection of life, liberty, and equality in this nation. In particular

[1] Pursuant to Rule 37.6 of the Rules of this Court, amici state that no counsel for a party has authored this brief in whole or in part and that no person or entity, other than amicus curiae, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief.

the movements to abolish slavery, to end racial discrimination, to include women within the franchise and the full obligations of citizenship, and to end irrational gender discrimination would have been set back severely. This reading of our history cautions against the expansion of civil RICO to nonviolent protesters who occasionally employ the tactic of civil disobedience to manifest their protest to the current status of the law.

Reasons for Granting the Petition

1. As an initial matter, amici note that the first and second questions presented in No. 01-1118 address clear and serious conflicts among the circuits that merit the full attention of this Court.

A. As to the first question – whether injunctive relief is available in a private civil action for treble damages brought under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c) – the court of appeals openly acknowledged that it was departing from the negative answer previously given to this question by the United States Court of Appeals for the Ninth Circuit in *Religious Technology Ctr.* v. *Wollersheim*, 796 F.2d 1076 (9th Cir. 1986), cert. denied, 479 U.S. 1103 (1987). See No. 01-1118, Pet. App. 6a-14a. The effect of this ruling was to affirm an injunction that should give one pause because of its stunning breadth (nationwide) and its extended duration (twelve years). This injunction should trigger alarm bells about the direct involvement of the federal judiciary in one of the most intense political controversies in the nation. Congress has never said that RICO was intended to become an instrument of judicial management of intense political debate. We urge the Court to grant the petition to address the first question, because the injunction sustained by the court of appeals is an unprecedented expansion of RICO unauthorized by the statute.

B. The second question presented is as follows: "Whether the Hobbs Act, which makes it a crime to obstruct, delay, or affect interstate commerce 'by robbery or

extortion' – and which defines 'extortion' as 'the *obtaining* of *property* from another, with [the owner's] consent,' where such consent is 'induced by the wrongful use of actual or threatened force, violence, or fear' (18 U.S.C. § 1951(b)(2) (emphasis added)) – criminalizes the activities of political protesters who engage in sit-ins and demonstrations that obstruct the public's access to a business's premises and interfere with the freedom of putative customers to obtain services offered there." The novel view of extortion advanced by the court of appeals, Pet. App. 28a-29a, is in clear and serious conflict with the decisions of other circuits, see, e.g., *United States* v. *Panaro*, 266 F.3d 938 (2001), and *United States* v. *Nedley*, 255 F.2d 350, 352-53, 355, 357 (3d Cir. 1958). The decision of the court of appeals in this case also represents a departure from this Court's teaching in *United States* v. *Enmons*, 410 U.S. 396, 400 (1973) (reversing Hobbs Act convictions of labor union officials and members who had engaged in acts of physical violence and destruction of property during a campaign to induce an employer to agree to a union contract, because they had acted to further "legitimate union objectives, such as higher wages in return for genuine services").

C. The third question presented is whether the exacting standards for the protection of First Amendment rights mandated by *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886 (1982) were satisfied in the district court, where the jurors were allowed to hear evidence of episodes completely unrelated to the petitioners. The court of appeals held that *Claiborne Hardware* was fully complied with, No. 01-1118, Pet. App. 14a-22a. Amici are of the view that the court of appeals paid mere lip service to the caution of two of the Justices in this case: "Conduct alleged to amount to Hobbs Act extortion, for example, or one of the other, somewhat elastic RICO predicate acts may turn out to be fully protected First Amendment activity, entitling the defendant to dismissal on that basis." *National Organization for Women v. Scheidler*, 510 U.S. 249, 264 (1994) (Souter, J., concurring, joined by Kennedy, J.) (citing *Claiborne Hardware*) The Court should also grant the petition to re-

view this question.

2. In this brief Amici focus on the second question. We address one point: if the novel theory of extortion adopted by the court of appeals were the law of the land at any earlier period of our history, it would have been a major impediment to all movements of social protest that have enhanced the protection of life, liberty, and equality in this nation.

Any serious student of American history is aware that the struggle to secure these fundamental freedoms has been deeply conflictual. *See, e.g.*, Howard Zinn, *A People's History of the United States* (1999). This theme of conflict over basic values recurs in every generation from the founding moment to the present, from the Boston Tea Party through antiwar protests (notably during the Mexican-American War, the Civil War, World War I, World War II, and the Vietnam War, and in response to the ongoing presence of weapons of mass destruction), to the most recent demonstrations against the New Economic Forum and the global order that it represents. Thus the controversy over abortion is by no means the first volatile issue in the nation.

America is a nation with both a strong respect for the civilizing force of law and a healthy regard for the moral limits on law itself acknowledged in the tradition of civil disobedience, including episodes of confrontation with authority, that can be found in virtually every period of American history. *See, e.g.*, David Weber, ed., *Civil Disobedience in America: A Documentary History* 185-88 (1978); Carl Cohen, *Civil Disobedience: Conscience, Tactics, and the Law* (1971); and Edward Madden, *Civil Disobedience and Moral Law in Nineteenth-Century American Philosophy* (1968). If the Court grants the petition, Amici will brief this point more fully, offering the Court several illustrations of why the view of extortion adopted by the court of appeals is fundamentally at odds with the history of our nation. At this stage of the proceedings, we think it enough to focus the discussion on two aspects of our constitutional history: racial equality and gender equality. Before treating these two central themes, we clarify our reading of

what the court of appeals did to the law of extortion.

A. The court of appeals sustained the imposition of massive civil damages upon the three named individual petitioners under the federal racketeering statute. The legal lynchpin of this use of RICO is that the petitioners conducted or participated in the conduct of the affairs of the Pro-Life Action Network [PLAN] through a pattern of "predicate acts" of extortion in violation of the Hobbs Act, 18 U.S.C. §1951, and various state extortion statutes.

To reach this result, the court of appeals sustained the district court "in all respects," Pet. App. 31a. The district court allowed the jury to hear the following evidence as probative of "extortion." "Obtaining" property was proved on respondents' showing a temporary delay in keeping an appointment at an abortion clinic (Tr. 5005). The clinics' lost "property" was the money diverted to "extraordinary security costs" (Tr. 572). Respondents did not allege or seek to prove any loss of business *per se*. Demonstrating, being in the way, delaying access, without more, was equated with violence to discourage patients (Tr. 712) from keeping their appointments and force clinics to pay additional security costs (Tr. 607). The court of appeals ruled that any errors that may have occurred in this handling of the evidence were "harmless," Pet. App. 30a, because the court of appeals adopted the respondents' theory that they did not need to demonstrate that the petitioners sought specifically to "obtain property," but that it was enough to demonstrate that the petitioners interfered with the personal rights of the owners of abortion clinics: "Property rights include a woman's right to choose what to do with an unplanned pregnancy. Our most precious rights are the intangible ones like the right to go about our lawful business free from fear. Interfering with those rights by threats and force and violence violates RICO." (Tr. 4987; see also Tr. 550).

As to acts of actual physical violence, the court of appeals sustained the decision of the district court allowing the plaintiffs to bring a dumpload of irrelevant evidence before the jury about the conduct of persons never identified in the trial. Whoever these parties were, their acts against

various abortion providers (Tr. 685, 687, 723, 1148, 1486, 2147-50) over the fourteen years from 1984 to trial were most emphatically not the acts of any of the named petitioners, all of whom are committed exclusively to nonviolent protest, sometimes involving illegal acts such as trespass that are fully punishable under state law. Without a scrap of evidence that any of these three individuals ever committed any act of violence at any time, respondents smeared the petitioners not with a broad stroke, but with a tar brush. For example, since there was no proof that any petitioner was responsible for the murders, arsons, and kidnappings that the respondents introduced into evidence, the district court excluded such evidence from the trial for the purpose of blaming defendants, but gave the respondents free rein to refer to such incidents as "background information" for the purpose of evaluating whether the petitioners were guilty of "extortion" (Tr.685, 723, 1486, 5181).

This is not harmless error. This is the pollution of the wellspring of justice. Presentation of evidence of this kind to a jury cannot be cured with a teaspoon of medicine at the end of the trial asking the jury to ignore what it was allowed to hear as part of the "context" within which they should evaluate the words and speeches of the petitioners, to determine whether these words constituted "threats" of "violence." (Tr. 5187) For example, when a clinic operator was not present, Mr. Scheidler went to the clinic to meet with her, he left his card and wrote on the back of it two words, "Choose Life." Petitioners were not allowed to testify that the phrase was from the Bible[2] and was used to encourage respect for all human life. (Tr.1489) Neither were the petitioners allowed to present counter-contextual evidence in rebuttal. This is the record upon which the court of appeals

[2] The author of the words is Moses; the context of his well-known sermon to the people of Israel is as follows: "I call heaven and earth to witness against you today that I have set before you life and death, blessings and curses. Choose life so that you and your descendants may live, loving the LORD your God, obeying him, and holding fast to him; for that means life to you and length of days, so that you may live in the land that the LORD swore to give to your ancestors, to Abraham, to Isaac, and to Jacob." (Deuteronomy 30:18-20).

fashioned its novel claim that proof of extortion under the Hobbs Act does not require a showing of "obtaining property" in any sense remotely like what the common law of extortion has traditionally meant. *See* Craig Bradley, *NOW v. Scheidler: RICO Meets the First Amendment*, 1994 SUPREME COURT REVIEW 129; Note, *Protesters, Extortion, and Coercion: Preventing RICO from Chilling First Amendment Freedoms*, 75 NOTRE DAME L. REV. 691 (1999).

B. If the view of the court of appeals described above had been the law of the land during the period of American slavery and Jim Crow, the overcoming of those twin evils would have been postponed for much longer than the time actually needed to do so.

As Justice Marshall reminded us during the Bicentennial of our Constitution, not everything about this country's past – including slavery and Jim Crow segregation – is cause for rejoicing. Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, 26 VALPARAISO U. L. REV. 21 (1991).

In recent times we frequently compared ourselves favorably to totalitarian regimes of the Left and the Right that swallowed up their opposition, sending them to the death camps and the Gulags for extermination. We take some pride in the way we have respected the strong voice of protest within our legal and political culture. Perhaps we have taken too much pride in our treatment of dissidents in view of the harsh penalties that were frequently applied to them. Whatever the right blend of pride and humility about our past, it is undeniable that our dissidents have at many critical turning points of American history helped to shape our destiny. But it has been a lot easier to recognize the value of social protest decades afterwards, when the position the protesters espoused was more broadly received by the people and incorporated into our laws.

Nearly everyone in America would now regard the eradication of the slavery system as the just and rightful repudiation of a brutal and inhuman labor system. Some might claim that slavery might have been abolished earlier

and with less bloodshed on the battlefields of the Civil War if the Abolitionists had been more "accommodating" to their adversaries, but this revisionist view overlooks the rigid mindset of the slaveholders who would brook no compromise on the matter of slavery as an "inalienable property right" bound up in their minds with an intractable position on state sovereignty.

Whatever the possible outcome of alternative hypothetical scenarios, the Abolitionists pressed groundbreaking ideas. The most famous of the Abolitionists, William Lloyd Garrison, was uncompromising in his campaign for immediate and complete abolition of slavery. In the first issue of *The Liberator* (Jan. 1, 1831) Garrison publicly renounced his previous position of gradual abolition and publicly asked "pardon of my God, of my country, and of my brethren, the poor slaves, for having uttered a [gradualist] sentiment so full of timidity, injustice and absurdity." And he wrote: "urge me not to use moderation in a cause like the present! I am in earnest. I will not equivocate – I will not excuse – I will not retreat a single inch – AND I WILL BE HEARD" (emphasis in original), as cited in Louis Ruchames, ed., *The Abolitionists: A Collection of Their Writings* 31 (1963).

The American Anti-Slavery Society, of which Garrison was President from 1843 to 1865, regularly burned a copy of the Constitution at its annual meeting in Boston, denouncing that document – because of its flawed compromise on slavery – as "a covenant with death, a compact with hell" (citing *Isaiah* 28:15); *see* Phillip S. Paludan, *A Covenant with Death: The Constitution, Law, and Equality in the Civil War Era* (1975). Under modern precedents that sort of activity would probably be deemed protected. *See Texas v. Johnson*, 491 U.S. 397 (1989) (burning of American flag protected); *but see United States v. O'Brien*, 391 U.S. 367 (1968) (burning of draft card not protected). Under the law as it then stood, these acts were not protected under the First Amendment. But at least no one imagined that the protest activity of the Abolitionists fell within the law of extortion.

Similarly unprotected conduct included the unlawful operation of the "Underground Railroad" to assist slaves to

flee from their masters, *see* Edward McGlynn Gaffney, *Politics Without Brackets on Religious Convictions*, 64 TULANE L. REV. 1143, 1160 (1990), and the "rescuing" of slaves from the very courtrooms where their extradition hearings under the Fugitive Slave Act were being held, *see* Aviam Soifer, *Status, Contract, and Promises Unkept*, 96 YALE L. J. 1916, 1919 (1987), and Stephen Campbell, *The Slave Catchers* 149 (1968). The Abolitionists suffered violence for their views not only at the hands of private parties, but also at the hands of the government.

Less famous Abolitionists may have been more effective in moving the hearts of their countrymen, but Garrison and the Abolitionists were ultimately heard. As Garrison accurately predicted in the opening issue of *The Liberator*, "POSTERITY WILL BEAR TESTIMONY THAT I WAS RIGHT" (emphasis in original), as cited in Ruchames, ed., *The Abolitionists, supra* at 31. Although not all of the acts of the Abolitionists would gain support even today, the basic thrust of their movement has now clearly prevailed in American law.

Decades after the failure of the problematic period of "Reconstruction," we are now more committed than ever to the enforcement of the Civil War Amendments that would have been inconceivable without the firm resolve of the "Radical Republicans" and their moral progenitors, the Abolitionists.

The Jim Crow system was as iniquitous at its core as it was violent in the pattern of enforcement by the government at the state and local levels. *See, e.g.*, C. Vann Woodward, *The Strange Career of Jim Crow* (3d ed. 1974). In the face of such systemic violence imbedded in the law, the Civil Rights Movement was remarkable precisely for the commitment of its leaders, principally Dr. Martin Luther King, Jr., to Gandhian nonviolence. But as Dr. King made clear in his famous Letter from Birmingham Jail, nonviolence did not mean obeying unjust laws. On the contrary, King and his followers in the Southern Christian Leadership Conference frequently challenged the brutality of the existing legal order. *See, e.g.*, Taylor Branch, *Parting the Waters* (1988) (use of tactics of civil disobedience similar to those

used by the petitioners in this case).

Amici note that – as in the period of abolitionism – the violence surrounding civil disobedience in the era of the Civil Rights Movement was committed primarily not by the protesters, but against them by their adversaries or by the police. Bull Connor undoubtedly thought he was preserving the peace against lawless agitators in Birmingham, but most of America saw the violence in the bared teeth of his dogs.

Memorable uses of civil disobedience in the era of the modern Civil Rights Movement included the efforts of the freedom riders and of the people who "sat in" places of public accommodation that were segregated on the basis of race. In some cases this Court overturned convictions for breach of the peace or for trespass under state law, perhaps for the reason that the Court could no longer countenance the underlying state legislation requiring Jim Crow segregation, *see, e.g., Brown v. Louisiana*, 383 U.S. 131 (1966).[3] In other instances the Court declined to reverse criminal convictions of protestors under state law, pointing to other dimensions of the facts, such as the integrity of the state courthouse or a State jailhouse. *See, e.g., Cox v. Louisiana*, 379 U.S. 559 (1965); *Adderley v. Florida*, 385 U.S. 39 (1966). No matter which way these cases turned, the inescapable fact is that civil rights activists engaged in acts of civil disobedience that would have been seriously impeded if the novel view of "extortion" adopted by the court of appeals had been the law of the land at that time.

The nation is now better off because of the movements to abolish slavery and to end Jim Crow law. Both of these movements faced steep opposition from those who wished to maintain the status quo. The opponents of these movements could easily have crushed the protesters if the theory of extortion adopted by the court of appeals had been available to them during these conflicted periods of American

[3] In a series of "sit-in" cases brought before the enactment of Title II of the Civil Rights Act of 1964, the Court declined to hold expressly that the Jim Crow laws were themselves unconstitutional, but found an alternative ground on which to reverse the State law conviction. *See, e.g., Bouie v. Columbia*, 378 U.S. 347 (1964); *Bell v. Maryland*, 378 U.S. 226 (1964).

history.

The district court acknowledged the relevance of this period of history to this case, which he agreed was "analogous to sit-ins at lunch counters and Rosa Parks' civil disobedience." Pet. App. 73a, see also Tr. 4339-40. But Judge Coar curiously concluded that the analogy with the sit-ins and the refusal to move to the back of the bus "works in [respondents'] favor" because those protesters were "arrested, jailed, and otherwise punished." Pet. App 73a. No one would seriously maintain that Martin Luther King, Jr., or his colleagues in the SCLC, were the sort of "racketeer" that Congress had in mind when it enacted RICO. The district court was understandably perplexed by the implication that some of his own rulings would have thrown an enormous obstacle in the path of the Civil Rights Movement. But it did not lead him to instruct the jury in the manner required by *Claiborne Hardware*. Though briefed on these matters, the court of appeals completely ignored this history in its discussion of the case.

C. If the view of the court of appeals had been the law of the land during the period of feminist insistence upon full participation in the rights and obligations of citizenship, equal justice under law for women and men would have taken much longer than the two centuries it took to achieve.

Many scholars have noted strong parallels between the slavery system and the abusive treatment of women as "chattels personal" subject to the law of coverture enacted by all-male legislatures and enforced by all-male courts. Women wanted to participate in the franchise and in all of the obligations of citizenship from the very outset of the republic. They were excluded from doing so on the basis of the theory of virtual representation, the very theory that the revolutionaries used to reject the imperial rule of Great Britain over the American colonies. *See, e.g.,* Linda K. Kerner, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* 3-33 (1998).

As with the struggle to abolish slavery and then to eradicate the legal structure of apartheid, the effort to change the inequality between men and women under the

law of this land was a prolonged and intense controversy. The feminists of the nineteenth century may not be contained within rosy-tinted portraits. Susan B. Anthony is now featured on the most valuable of our coins and is rightly remembered as the principal advocate for the enfranchisement of women. She was also an agent of the American Anti-Slavery Society. In this capacity she urged an audience before the Civil War to "overthrow this government, commit its blood-stained Constitution to the flames, blot out every vestige of that guilty bargain of the father." As cited in Alma Luz, "Susan Brownell Anthony," in 1 *Notable American Women, 1607-1950: A Biographical Dictionary* 53 (Edward James ed. 1971).

Eight decades after the adoption of the Nineteenth Amendment we now take for granted that women should be able to vote. But Anthony's advocacy of this view was never easy. For example, Anthony challenged the legitimacy of the all-male franchise by voting in Rochester in 1872 before a constitutional amendment expressly allowed it. She was convicted of voting fraud after a member of this Court, Justice Ward Hunt, disallowed the introduction of exculpatory evidence and directed the jury to enter a verdict of guilt without any opportunity to reflect upon the evidence. *United States v. Anthony*, 24 F. Cas. 829 (C.C.N.D.N.Y. 1873). Such judicial misconduct is reminiscent of the egregious behavior of Justice Chase presiding over trials under the infamous Sedition Act of 1798. *See* William H. Rehnquist, *Grand Inquests: The Historic Impeachments of Justice Samuel Chase and President Andrew Johnson* (1992).

The transcript of Anthony's bold statement before her sentencing makes clear that she was prepared to risk not only violating the law as it then stood, but also to risk being found in contempt of court. Anthony continued to speak powerfully about the injustice of her conviction, even though Justice Hunt demanded that Anthony sit down and be silent, warning her seven times to the effect that "The Court can not allow the prisoner to go on." After she finally sat down, the Court required her to stand up to hear her sentence, and she then told the Court: "May it please your

honor, I shall never pay a dollar of your unjust penalty.... I shall earnestly and persistently continue to urge all women to the practical recognition of the old revolutionary maxim, that 'Resistance to tyranny is obedience to God.'" David Weber, ed., *Civil Disobedience in America: A Documentary History* 185-88 (1978).

Anthony's views were ultimately vindicated by the enactment of the Thirteenth Amendment abolishing slavery and the Nineteenth Amendment enfranchising women. But the Thirteenth Amendment was ratified in 1865 only after the Civil War, and the Nineteenth Amendment was ratified in 1920 only after several further bold acts of public protest unmasking the "hypocrisy" of President Woodrow Wilson's commitment to wage war for democracy for males in Europe, but not to proceed peacefully within our constitutional processes to secure the franchise for females in America. Like the Abolitionists, the Suffragists suffered violence. Federal troops dispatched by President Wilson broke up a peaceful protest in the nation's capital.

As the court of appeals noted in the first phase of this litigation, women played a leading role in the temperance movement. *National Organization for Women v. Scheidler*, 968 F. 2d 612, 620 (7th Cir. 1992). There is a striking similarity between the acts of the petitioners complained of here and the militant tactics employed by famous nineteenth century feminists who led the temperance movement. For example, Carry Nation and others like her applied constant moral pressure on owners of saloons to discontinue their sale of alcohol, and were willing to disrupt their business by charging into saloons and destroying kegs of whiskey and beer with an ax. *See, e.g.*, Jack Clocker, *"Give to the Winds Thy Fears": The Women's Temperance Crusade, 1873-1874* 50, 76-77, 197 (1985) (describing violence against protesters); Joseph Gasfield, *Symbolic Crusade: Status Politics & the American Temperance Movement* (2d ed. 1986); Mother Stewart, *Memories of the Crusade, A Thrilling Account of the Great Uprising of the Women of Ohio in 1873, Against the Liquor Crime* (1972).

The demonstrations and sit-ins occurring during the period while the ratification of the Equal Rights Amendment

was being debated are reminiscent of those during the Civil Rights Movement. The golden rule, or equal justice under law, suggests that the standards applied to the respondents in that period should also apply to the petitioners in the era of contestation over abortion.

The abolitionists and those engaged in the modern Civil Rights Movement sometimes engaged in civil disobedience to help raise the awareness of the nation that the rule of law that countenanced slavery and then apartheid was intolerable. The feminists of the nineteenth century and those engaged in the modern movement for gender equality also engaged in civil disobedience to bear witness to the injustice of rules of law imposed upon women without their consent by all-male legislatures in which they had neither voice nor vote. If the novel view of extortion espoused by the court of appeals – equating trespass with "obtaining property" – had been the law of the land in any of these eras, it would probably have taken much longer to achieve the prohibition of discrimination on the basis of race, color and gender contained in statutes such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

This Court has been especially alert to the fragility of movements protesting against deprivations of liberty and equality. In *New York Times v. Sullivan*, 376 U.S. 264 (1964), the Court protected the assets not only of the country's most powerful newspaper, but also one of the weakest and most vulnerable movements of that era, which would not have survived if its political adversaries had been permitted to use state libel law to impose runaway monetary judgments against it. *See, e.g.*, Anthony Lewis, *Make No Law: The Sullivan Case and the First Amendment* (1991). The Court should act now with no less solicitude to secure the freedom of expression on controversial matters to all classes of protesters without discrimination on the basis of the content of their speech or the viewpoint they express. The Court should take this case to set sensible limits upon the use of civil RICO that are informed by our nation's history and by the principles of the First Amendment. To do so would reinforce the "profound national commitment to the principle that debate on public issues should be uninhibited,

robust, and wide open." *New York Times v. Sullivan*, 376 U.S. , at 270.

Conclusion

One of the easiest ways to know that the court of appeals is wrong in its reading of the law of extortion is that it is so profoundly out of kilter with this nation's history. This Court should take this case to correct a problem that is bound to wreak a lot of mischief unless the Court withdraws the federal judiciary from heavy-handed and one-sided intervention in contentious political controversies better left to the People and to their elected representatives. If the federal racketeering law is to be expanded far beyond the reach and grab of its original scope, that task should be accomplished by statutory amendment, not by judicial sleight of hand. If RICO is to become an instrument of shackling popular protest in political controversies, let the People's elected representatives in Congress – not the courts – inflict such a wound on the democracy. The Court should grant the petition for a writ of certiorari.

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